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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

TEFERI BIKILA, an individual,

Plaintiff,

v.

VIBRAM USA INC., a Delaware
corporation,

Defendant.

Case No. 3:15-cv-05082

**COMPLAINT FOR VIOLATION OF
WASHINGTON PERSONALITY RIGHTS
ACT, FALSE DESIGNATION OF
ORIGIN/UNFAIR COMPETITION,
VIOLATION OF THE CONSUMER
PROTECTION ACT, UNJUST
ENRICHMENT, INJUNCTIVE RELIEF,
AND, CONSTRUCTIVE TRUST**

JURY TRIAL DEMANDED

COMES NOW plaintiff, and alleges as follows:

PARTIES

1. Plaintiff Teferi Abebe Bikila (“Teferi Bikila”) is an individual residing in Tigard, Oregon. Teferi Bikila is the son of the late runner, Abebe Bikila.

2. Abebe Bikila was born on August 7, 1932, in Jato, Ethiopia, a district of Jirru in northern Shewa. Abebe Bikila was the winner of the 1960 and 1964 Olympic Marathons. Abebe Bikila was a last minute addition to the Ethiopian Olympic team in 1960, having been initially passed over for another runner. The shoe sponsor could not provide Abebe Bikila with

1 shoes that properly fit him. Instead of wearing shoes that didn't fit, Abebe Bikila ran, and won,
2 the race barefoot. His barefoot win instantly catapulted him to international fame for rejecting
3 convention and winning Olympic gold with courage and in exceptional style. Thereafter, his
4 name and likeness became affiliated with barefoot running. He is the only person to win the
5 Olympic marathon gold medal while competing barefoot.

6 3. Abebe Bikila ran and won the 1964 Olympic Marathon only 40 days after having
7 an appendectomy. In light of his work ethic, will to win, and unconventional style, Abebe Bikila
8 continues to be regarded as one of the most courageous athletes of modern times.

9 4. In 1969, Abebe Bikila was involved in a car accident that left him paralyzed. He
10 died in 1973, in Addis Ababa, Ethiopia, at the age of 41 from complications related to the car
11 accident. His injury and tragic death contributed to the public's interest in his legendary
12 Olympic performances.

13 5. Abebe Bikila is survived by his wife, Yewebdar Weldgiorgis, and children, Tisge
14 Abebe Bikila, Yetenayet Abebe Bikila and the plaintiff, Teferi Bikila. Collectively, Yewebdar
15 Weldgiorgis, Tisge Abebe Bikila, Yetenayet Abebe Bikila and, Teferi Bikila are hereinafter
16 referred to as the "Bikila Family."

17 6. Together, the Bikila Family owns, sells, markets, promotes, administers, and
18 licenses the likeness, photographs, name, and other artistic properties of the late Abebe Bikila.

19 7. Pursuant to a power of attorney, Teferi Bikila is authorized to represent the Bikila
20 Family in this lawsuit regarding Vibram USA Inc.'s unauthorized use of Abebe Bikila's name
21 and related personality and publicity rights.

22 8. Defendant Vibram USA Inc. ("Vibram USA") is a corporation organized and
23 existing under the laws of the state of Delaware with its principal place of business located at 9
24 Damonmill Square, Suite H3, Concord, Massachusetts. Vibram USA sells shoes and sporting
25 equipment in the United States, including in the State of Washington.
26

JURISDICTION AND VENUE

9. Among other claims, this is a suit for false designation of origin and arises under the trademark laws of the United States; namely, Title 15 of the United States Code and more particularly 15 U.S.C. § 1125 and 15 U.S.C. §§ 1116-18, inclusive. This Court has jurisdiction under the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338(a) and 1338(b). Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1391(c).

10. On information and belief, Vibram USA directed their products into the stream of commerce, with knowledge that those products would be sold in the State of Washington and City of Tacoma. Vibram USA's infringing mark is used on products sold in brick and mortar stores in the state of Washington and City of Tacoma. In addition, Vibram USA hosts a website at <http://www.vibram.com/index.php/us/VIBRAM/Where-we-are/USA/Vibram-USA> that contains an offer to sell infringing products, and links to active sites that sell infringing products into the State of Washington. For example, the following website indicates that Vibram USA's shoes are listed for sale at REI at 3825 S. Stelle Street, Tacoma, Washington, 98409: http://www.vibramfivefingers.com/productsupport/store_locator.cfm?zip=&radius=25&120208=yes&state=WA&submit_zip.x=17&submit_zip.y=7.

VIBRAM USA'S INFRINGEMENT

11. On or about May 15, 2009, Vibram FiveFingers, LLC ("VFF"), an entity affiliated with Vibram USA and its parent company, Vibram S.p.A ("Vibram SPA"), filed a trademark application for "Bikila" as a word mark under international class 025 for Footwear (the "Bikila Trademark").

12. On July 20, 2010, the United States Patent and Trademark Office ("USPTO") issued VFF the Bikila Trademark under registration number 3822947.

13. On November 11, 2010, VFF assigned its entire interest in the Bikila Trademark to Vibram SPA, a corporation organized and existing under the laws of the country of Italy.

14. Vibram USA is a wholly-owned subsidiary of Vibram SPA and uses the Bikila

Trademark to sell shoes and clothing in the United States.

15. In 2010, Vibram USA introduced the “Bikila” model of its “FiveFingers” line of minimalist running shoes. Vibram USA’s “Fivefingers” shoes are intended to mimic biomechanical properties of barefoot running while providing the protection of a conventional shoe. Vibram USA’s Bikila model shoes are named after Abebe Bikila and are intended to associate Vibram USA’s commercial footwear with Abebe Bikila’s legendary barefoot Olympic feats. Vibram USA currently sells several lines of men’s and women’s Bikila model shoes including, but not limited to, the following:

- a. “Men’s Bikila LS”
- b. “Men’s Bikila EVO”
- c. “Men’s Bikila EVO WP”
- d. “Women’s Bikila EVO WP”
- e. “Women’s Bikila LS”
- f. “Women’s Bikila EVO”

16. In addition to its Bikila line of shoes, Vibram USA sells a line of Bikila clothing.

ABEBE BIKILA’S PERSONALITY RIGHTS

17. Following Abebe Bikila’s death, his legacy in the sporting world continued. In 1974, New York Road Runners inaugurated an annual award in Abebe Bikila’s honor – the Abebe Bikila Award – which is given to individuals for their contribution to long-distance running.

18. From approximately 1980 to 1990, the Bikila Family operated a sporting goods store in Ethiopia named after Abebe Bikila.

19. In 1996, Tisge Abebe Bikila published the book *Triumph and tragedy: A history of Abebe Bikila and his marathon career (1996)*. The book was on sale during the 1996 Olympics held in Atlanta, Georgia.

20. In 2007, Abebe Bikila was featured in a Japanese commercial with permission

1 from the Bikila Family.

2 21. In 2009, a feature film named Atletu (The Athlete) was released featuring the
3 final years of Abebe Bikila's life.

4 22. Since 2010, the Bikila Family has operated the website www.abebebikila11.com
5 (the "Website"). The Website offers a comprehensive experience of the life and legacy of Abebe
6 Bikila. The Website contains pictures, videos, news events, information on current races such as
7 the Abebe Bikila International Marathon – a marathon held annually in Addis Ababa, which is
8 sponsored by the Bikila Family.

9 23. The Website also contains a link to contact the Bikila Family.

10 24. Abebe Bikila's name is well-known by consumers and the running community.

11 25. Since Abebe Bikila's passing, the Bikila Family has sought to protect
12 Abebe Bikila's personality rights and intellectual property from any unauthorized use for
13 commercial purposes. Additionally, by their commercial uses, sponsorship and promotion of
14 historical and educational events, and multimedia events emphasizing the cultural and athletic
15 legacy of Abebe Bikila, the Bikila Family has intentionally associated their family name with
16 Abebe Bikila's barefoot dedication to succeed under any circumstances.

17 **FIRST CLAIM**
18 **(Violation of Washington Personality Rights Act,**
19 **RCW 63.60 et seq.)**

20 26. Teferi Bikila realleges and incorporates paragraphs 1 through 25 as though fully
21 set forth herein.

22 27. At the time of Abebe Bikila's death on October 25, 1973, his name, signature,
23 photograph, and likeness had commercial value. Abebe Bikila is a deceased personality as
24 defined under RCW63.60.20(2).

25 28. Upon his death, Abebe Bikila's personality rights were transferred to his heirs, the
26 Bikila Family, pursuant to Ethiopian law.

29. As set forth more fully above, Vibram USA infringed the personality rights of

1 Abebe Bikila in violation of RCW 63.60.60.

2 30. As a result of Vibram USA's infringement, Teferi Bikila has suffered damages in
3 an amount to be proven at trial, but currently believed to exceed \$5,000,000. Pursuant to RCW
4 63.60.060, Vibram USA is liable for its unlawful infringement in an amount of \$1,500 or the
5 actual damages sustained as a result of the infringement, whichever are greater, along with any
6 profits attributable to Vibram USA's infringement.

7 31. In addition, Teferi Bikila is entitled to recover his attorney fees, expenses, and
8 court costs incurred herein.

9 **SECOND CLAIM**
10 **(Washington Consumer Protection Act – Count One)**

11 32. Teferi Bikila realleges and incorporates paragraphs 1 through 31 as though fully
12 set for the herein.

13 33. By the acts alleged herein, Vibram USA has violated the Washington Consumer
14 Protection Act, RCW §19.86.020, in that Vibram USA's acts constitute unfair or deceptive acts
15 or practices in the conduct of trade or commerce.

16 34. Vibram USA's conduct is confusing and deceptive to the public.

17 35. Vibram USA's conduct has caused damage to Abebe Bikila's business reputation,
18 personality rights, and other rights and properties of the Bikila Family in an amount to be
19 determined at trial, but currently believed to exceed \$5,000,000. Teferi Bikila is entitled to
20 injunctive relief, attorneys' fees and costs, and other equitable relief as this Court may order.

21 **THIRD CLAIM**
22 **(Washington Consumer Protection Act – Count Two)**

23 36. Teferi Bikila realleges and incorporates paragraphs 1 through 35 as though fully
24 set for the herein.

25 37. By the conduct alleged more fully above, Vibram USA's violation of the
26 Washington Personality Rights Act, RCW 63.60 *et seq.*, is a *per se* violation of the Washington
Consumer Protection Act, RCW §19.86.020.

38. Abebe Bikila, Teferi Bikila, and the Bikila Family are in the class of people protected under the Washington Personality Rights Act.

39. Vibram USA's violation of the Washington Personality Rights Act is the proximate cause of the damage to Abebe Bikila's business reputation, personality rights, and other rights and properties of the Bikila Family in an amount to be determined at trial, but currently believed to exceed \$5,000,000. Teferi Bikila is entitled to injunctive relief, attorneys' fees and costs, and other equitable relief as this Court may order.

FOURTH CLAIM
(False Designation of Origin/Federal Unfair Competition,
15 U.S.C. § 1125(a))

40. Teferi Bikila realleges and incorporates paragraphs 1 through 39 as though fully set forth herein.

41. Vibram USA advertises and offers for sale, in interstate commerce, unauthorized and infringing goods through use of the Bikila Trademark.

42. Vibram USA's actions are intentional and designed to capitalize on the goodwill and recognition associated with the well-known rights owned by the Bikila Family and prosecuted by Teferi Bikila. Vibram USA's actions create a false designation of origin and false representation as to the origin, source, sponsorship, endorsement, affiliation, and authenticity of the infringing products they are advertising and offering for sale. Such actions create a likelihood of confusion in the consuming public. Vibram USA knows that its actions are likely to create confusion among the consuming public and by its actions intend to confuse, defraud, and deceive the consuming public into believing that Abebe Bikila and/or the Bikila Family produces, sponsors, or endorses Vibram USA's products and services, when they do not.

43. Vibram USA's actions, as described above, are in violation of 15 U.S.C. § 1125(a). Unless enjoined and restrained by this Court, Vibram USA will continue to engage in such unlawful conduct. Teferi Bikila has no adequate remedy at law in that Vibram USA will continue its infringing conduct. Teferi Bikila therefore seeks injunctive relief precluding Vibram

USA from further acts of infringement and from any further use, reference to, or association with the Bikila Family and their mark, including but not limited to, ordering Vibram USA to cease use of the Bikila name and not to file any USPTO applications for marks infringing the rights of the Bikila Family. Teferi Bikila further seeks an injunction ordering that the past and misleading representations by Vibram USA be corrected in writing and that all profits made while engaging in infringing conduct be held in constructive trust for Teferi Bikila. Teferi Bikila further seeks destruction of infringing articles as authorized by 15 U.S.C. § 1118. Teferi Bikila seeks such other injunctive relief as may be reasonable and appropriate to protect further infringement of its rights in and to the personality and intellectual property rights of Abebe Bikila and the Bikila Family.

44. Teferi Bikila further alleges that the Bikila Family has been damaged as a result of Vibram USA's infringing actions as alleged herein. Teferi Bikila is entitled to recover the Bikila Family's damages, as well as Vibram USA's profits, treble damages, corrective advertising damages, and attorneys' fees pursuant to 15 U.S.C. § 1117.

FIFTH CLAIM (Unjust Enrichment)

45. Teferi Bikila realleges and incorporates paragraphs 1 through 44 as though fully set forth herein.

46. On information and belief, Vibram USA has wrongfully received money from third parties that they should not in equity and good conscience retain, on account of their violation of the Washington Personality Rights Act, unfair competition, and other related acts set forth above.

47. The benefit unjustly received by Vibram USA implies a promise, or quasi-contract, to pay those benefits to the Bikila Family.

48. The Bikila Family has demanded that Vibram USA stop its infringement and misappropriation of Abebe Bikila's personality rights and business goodwill, and Vibram USA has refused.

1 49. The Bikila Family seeks restitution from Vibram USA consisting of all monies
2 and profits received by Vibram USA on account of its violations of the Bikila Family's rights.

3 **SIXTH CLAIM**
4 **(Constructive Trust)**

5 50. Teferi Bikila realleges and incorporates paragraphs 1 through 49 as though fully
6 set forth herein.

7 51. Teferi Bikila has no adequate remedy at law. In addition to the equitable
8 remedies sought herein, Teferi Bikila seeks an accounting and constructive trust on all further
9 monies received by Vibram USA on account of its violations of the Bikila Family's rights.

10 WHEREFORE, Teferi Bikila prays for judgment against Vibram USA as follows:

11 1. **Injunctive Relief:**

12 a. For its False Designation of Origin and State Claims: That this Court
13 Grant an injunction enjoining and restraining Vibram USA and their distributors, agents,
14 employees, and licensees from (1) directly or indirectly using the words "Bikila" or any
15 other mark, word or name similar which is likely to cause confusion; and (2) continuing
16 any and all acts of unfair competition as herein alleged. And that this Court order the
17 Defendant to abandon any pending applications with the U.S. Patent and Trademark
18 Office or elsewhere for marks infringing the rights of the Bikila Family.

19 2. **Damages:**

20 a. For all Claims: That Vibram USA be required to account to Teferi Bikila
21 for any and all monies and profits derived by Vibram USA from the sale of their goods
22 and for all damages sustained by the Bikila Family by reason of Vibram USA's acts
23 complained of herein, and that any future profits or monies received by Vibram USA as a
24 result of its infringing activities be held in constructive trust for the benefit of the
25 Bikila Family, and be paid to Teferi Bikila.

26 b. For its Claims of Infringement under 15 U.S.C. § 1125 and Violations of
RCW §19.86.020: That this Court award Teferi Bikila treble the amount of actual

1 damages suffered by the Bikila Family, as permitted by 15 U.S.C. § 1117 and
2 RCW §19.86.090, in an amount to be determined at trial, but currently believed to exceed
3 \$5,000,000.

4 c. That this Court award punitive damages and exemplary damages and
5 corrective advertising damages against Vibram USA and in favor of Teferi Bikila in an
6 amount to be determined at trial by reason of Vibram USA's willful infringement of
7 Abebe Bikila's personality rights and palming off.

8 3. That Teferi Bikila be awarded his costs in this action.

9 4. That this is an exceptional case and that Teferi Bikila be awarded his reasonable
10 attorneys' fees under 15 U.S.C. § 1117 and RCW §19.86.090.

11 5. That this Court grant such other and further relief as it shall deem just and
12 equitable.

13 DATED: February 9, 2015.

Respectfully submitted,

14 /s/ Alexander C. Trauman
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